IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1170 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VANRAJSINH PRATAPSINH SARVAIYA

Appearance:

MR MA PATEL, APP for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/06/2001

ORAL JUDGEMENT

1. The State of Gujarat has filed this appeal against the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Amreli in Criminal Case No. 1609/1992 dated 30/9/1992 whereby

learned Magistrate has acquitted the respondent for the offence under Section 142 of the Bombay Police Act.

2. According to the prosecution, witness Apabhai Virabhai and Police Constable Jogidas Amubhai were on night patrolling on 30/5/1992 during which they received information that the present respondent was likely to enter village Chital despite the fact that vide externment order passed by the Sub-Divisional Magistrate dated 8/5/1992 under the provisions of section 56 of the Bombay Police Act, he was prohibited from entering into the districts of Amreli and Rajkot. Chital is situated in Amreli district. It is the case of the prosecution that Apabhai and Jogidas contacted their superior officers and apprised them of the fact about proposed illegal entry of the respondent in Chital town. Police authority therefore, kept vigilance and they noticed that around 4.00 O'clock in the early morning of 31/5/1992 a motor car approaching Chital town from Monpur. The Police party stopped the car and upon checking the same, found the present respondent sitting in it. The police asked him to produce the permit allowing him the entry in Chital by the competent authority, but he failed to do so and hence he was arrested at about 4.30 a.m. on that day. On 31/5/1992 Apabhai Virabhai lodged complaint with the Circle Police Inspector, Amreli, camp at Chital against the respondent for an offence under Section 142 of the Bombay Police Act. The police upon receipt of the complaint commenced investigation and at the end of the investigation submitted charge-sheet to the concerned Court.

3. The case before the learned Magistrate came to be numbered as Criminal Case No. 1609/1992. During the trial the prosecution examined witness Dharmadas Bansidas at exh.7, witness Mansukh Bhagwan at Exh.9 and witness Apabhai Virabhai at exh. 10. The statement of the respondent u/S. 313 of the Criminal Procedure Code was also recorded. The learned Magistrate at the end of the trial found that the prosecution had not been able to prove its case against the respondent and hence acquitted the accused vide judgment dated 30/9/1992. As stated above, the State has now approached this Court by way of present Criminal Appeal.

4. Mr. Patel, Ld. APP has taken me through the record of the case including the evidence of the prosecution witnesses. The prosecution witness no. 1 Dharmadas Bansidas has been examined at exh. 7. This witness acted as a Panch for the Panchnama drawn by the police on 31/5/1992. In his evidence he stated that on

31/5/1992 he was called by the police to act as a Panch. He was called at about 4.00 O'clock in the morning of 31/5/1992. He has further stated that except police no one was present there. While they were standing near the railway bridge, they saw the car coming from Monpur side and when it came near the police, the police signaled the driver to stop it. Upon checking the car it was found that the present respondent was sitting inside. Thereafter the Panchnama at Exh.8 was drawn. In the cross-examination this witness has stated that he is having Pan cabin situated on the public road. He has stated that if he did not maintain good relations with police, police may remove his cabin from that place. He has also admitted that he was often called by the police to act as a Panch. Lastly he has stated that he had never gone to the place where the car in which the accused was travelling was stopped and at that time he was sleeping at his residence.

5. Looking to the evidence of this witness, it is very clear that he often obliges the police by acting as a Panch. Therefore, he does not appear to be an independent witness. He has also stated in his evidence that he had never been to the place where car was stopped and at that time he was sleeping at his residence. The evidence of this witness therefore, does not inspire confidence.

6. The second witness examined is P.W. 2 Mansukhbhai Bhagwan, who has stated in his evidence that on 31/5/1992 he was called at the police station and his signature was taken on the Panchnama Exh. 8. He has further stated that except this he did not know about the facts. The prosecution has declared this witness as hostile. In cross-examination this witness has stated that he was called near the railway bridge on Chital - Monpur road at about 4.00 O'clock in the morning and that a motor car bearing No. 9450 was there in which the present respondent was sitting. It is to be noted that the evidence of this witness does not support the case of the prosecution.

The prosecution has also examined Apabhai Virabhai P.W. 3. He has stated in his deposition that on 31/5/1992 he alongwith police officer was near Monpur railway bridge and had stopped one ambassador car and upon checking, they found that present respondent was travelling in it. He has further stated that the respondent had failed to produce any document permitting him to enter the district of Amreli and since an order of externment passed against him prohibiting him from

entering district Amreli, he was arrested and a complaint was lodged against him for committing an offence under Section 142 of the Bombay Police Act. He has produced the complaint which is at Exh. 11 on record of the case. Similarly he has also produced order of externment passed against the respondent which is at Exh.12. In the cross-examination, this witness deposed that the order of externment was passed on 8/5/1992 and at that time respondent was in jail. He has also stated in his evidence that the order of externment was required to be communicated to him through the jailor as at that time the respondent was in Amreli Sub-Jail. He further states that he has no knowledge whether the order of externment had been communicated to the respondent through the jailor. He has also admitted that no statement of the jailor has been recorded by the investigating agency. So far evidence of this witness is concerned, it reveals that though the order of externment under the provisions of section 56 of the Bombay Police Act was passed against the respondent by the Sub Divisional Magistrate, Amreli there was no evidence on record to show that this order was ever communicated to the respondent. The order of externment at Exh. 12 merely states that this order was required to be communicated to the respondent. Apabhai has admitted in his evidence that the respondent was required to be communicated this order through the jailor as at the relevant point of time he was detained in Amreli Sub Jail. It is an admitted fact that Jailor's statement has not been recorded and that he has not been examined in this case by the prosecution to prove that the order of externment was communicated to the respondent through him. Mr. Patel, Ld. APP has also fairly admitted that there is no other evidence on record to show that the order of externment was served on respondent.

6. It, therefore, appears that there is no independent and cogent evidence available on record to support the prosecution case. Moreover, it is also an admitted fact that there was no evidence to show that the respondent knew about passing of an externment order against him prohibiting him from entering into districts of Rajkot and Amreli and that he had deliberately flouted the said order. It may also be noted that this is an appeal against acquittal and if I find that the order of acquittal passed by the learned Magistrate is in consonance with the evidence on record, I should not disturb the said order in appeal. On going through the entire record and upon hearing Mr. Patel, I find that the prosecution has not been able to prove its case against the respondent beyond reasonable doubt. Hence,

the order of acquittal passed by the learned Magistrate is proper. The appeal, therefore, requires to be dismissed and it is hereby dismissed. Bail bonds, if any, are ordered to be cancelled.

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* Pansala.